

To: John Ramsay, Dan Ford and Nick Heath

Re: Proposed zoning of 407 Cloverside Rd, Lucaston.

Dear delegates,

The following representations are made in respect of the property at 407 Cloverside Rd, Lucaston ('the Property') and are made in addition to the representations lodged with the Planning Authority during the LPS exhibition period.

It is submitted that proposal by the Planning Authority to zone the Property as Landscape Conservation (LCZ) is wrong, and the draft LPS should be amended to zone the Property as **Rural**.

The following paragraphs outline why the proposed LCZ is incorrect and why Rural zoning is the only appropriate option.

Property information

The property sits at the top of Cloverside Rd and is adjoined by several other rural properties which were developed following the subdivision of a large farming property in approximately 2003. The top 25% (approx.) of the land, which sits at the ridge of the hill that the Property is situated on, is cleared and developed and has been for some time. The cleared area of the Property contains a 2 bedroom residential dwelling clad in red Colorbond, landscaped outdoor areas, boundary and livestock fencing, electricity infrastructure such as powerlines, water infrastructure, multiple vegetable cultivation areas, a fruit and nut orchard, livestock enclosures, ornamental gardens, established lawns and many other improvements.

The lower portion of the Property consists of cattle grazing pasture and fencing that has been allowed to revegetate over the years, and is now primarily populated with small to medium - sized *Eucalyptus obliqua* trees and native shrubs. The lower part of the property is also dotted with dilapidated grazing infrastructure such as dams and old farming equipment.

Owner / Representatives: Joel Smith and Daniel Webb			Location address: 407 Cloverside Road, Lucaston		
CT	PID	Area Size	IPS	Council LPS (Post 35F)	Requested Zone/s
139274/5	2196334	9.32ha	26.0 Rural Resource	Landscape Conservation	Preference 1. Rural Preference 2. Split zoning. Lower 50% of Property LCZ, upper 50% Rural.

Location of title.



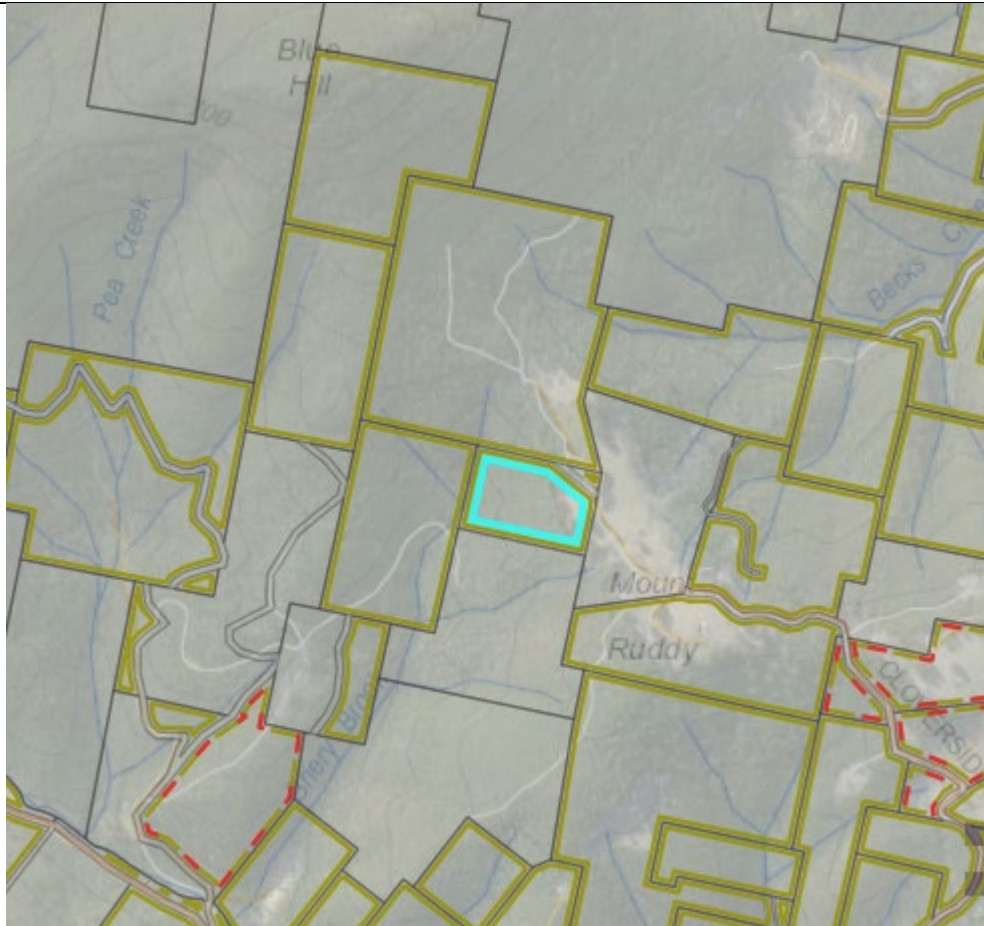
LEGEND

General Residential	Light Industrial	Community Purpose
Low Density Residential	General Industrial	Recreation
Rural Living	Rural	Open Space
Village	Agriculture	Future Urban
Local Business	Landscape Conservation	Particular Purpose
General Business	Environmental Management	Split*

*Split Zones please consult Draft-HVC-LPS data Appendix 61 and later 35F documentation.

**Light Blue Border shows owner's land in question.

Viewshed: 0% coverage



Huon Valley Zoning Association's (HVZA) Viewshed Map:

LEGEND			
HVZA-ViewShed	8 - 10	18 - 20	Landscape Conservation
No. of Viewpoints	10 - 13	20 - 23	Landscape Conservation Split Zone
< 3	13 - 15	> 23	
3 - 5	15 - 18	HVC-LCZ-Post35F	
5 - 8	VIEWShed		

*Light Blue Border shows owner's land in question.

**Landscape Conservation (LCZ) Borders indicate land within the Huon Valley Councils Endorsed 35F and Draft-LPS with LCZ full or split Zoning intent.

*** The HVZA-Viewshed indicates how visible parts of the subject title is from a viewshed based off of verified scenic road corridors. The colour shade represents how many viewpoints can see a portion of land. Further, explanation is to be provided to the Tasmanian Planning Commission (TPC) by HVZA.

Proposed LCZ zoning inconsistent with Guideline No. 1 Local Provisions Schedule: zone and code application 2018 (LPS guidelines)

1. The LCZ zoning proposed by the Planning Authority is not consistent with the [Section 8a guidelines published by the TPC](#) ('the Guidelines'). The Planning Authority has significantly misinterpreted and misapplied the Zone Application Guidelines, resulting LCZ being incorrectly deemed appropriate for the property, rather than Rural.

Misapplication of LCZ 1

2. LCZ 1 in the Guidelines states that:

"The Landscape Conservation Zone should be applied to land with landscape values that are identified for protection and conservation, such as bushland areas, large areas of native vegetation, or areas of important scenic values, where some small scale use or development may be appropriate."

3. The TPC have provided clear and unambiguous guidance on the interpretation of LCZ 1 in *Flinders Local Provisions Schedule approval* [2022] TASPComm 16 (21 April 2022). In that decision, the delegates stated that:

"324. The Landscape Conservation Zone guidelines in the context provided by the zone purpose, require the Zone to be applied to land with landscape values. LCZ 1 is the key guideline, and its application is contingent on identification of landscape values."

325. Landscape is defined in the Macquarie Dictionary as 'a view or prospect of rural scenery, more or less extensive, such as is comprehended within the scope or range of vision from a single point of view.' Value is defined as 'that property of a thing because of which it is esteemed, desirable, or useful, or the degree of this property possessed; worth, merit, or importance.' Therefore, in the context of Guideline No. 1 and the Zone purpose, landscape value is taken to mean that the land must be significantly visible from surrounding areas and must be perceived to have positive value that is important or beneficial to the degree that it warrants specific control of its use. Otherwise the impacts on natural and scenic values can be managed through the Priority Vegetation Area and Scenic Protection Area overlays."

4. The guidance in the *Flinders* decision accords with a plain English interpretation of LCZ 1 and establishes a two-step test for determining the presence of 'Landscape Values' on a property:

1. The land must be significantly visible from surrounding areas, and

2. The land must be perceived to have a positive value that is important or beneficial to the degree that it warrants specific control of its use.

5. The Planning Authority's criteria for applying LCZ 1 in the [Supporting Report for the Huon Valley Draft Huon Valley Local Provisions Schedule November 2021](#) demonstrates a fundamental misunderstanding of LCZ 1, and the Planning Authority's interpretation and application of LCZ 1

cannot be reconciled with the TPC's own interpretation. In regard to LCZ 1, the Planning Authority states (at p. 41) that:

"The application of 80% native vegetation coverage coupled with the presence of either the Natural Assets or Scenic Landscape Code overlay as the first level of selection meets the intent of this guideline in that most of the property is constrained but there may be some potential for small scale use or development. A significant portion of the properties selected are located on the vegetated scenic hill slopes that characterise the Huon Valley. These areas have been spared from historical clearing due to being considered suboptimal for agriculture. The analysis of 'large areas of native vegetation' was attributed to a minimum native vegetation patch size of 20 ha. This links directly with the LCZ use standard 22.5.1 P1 minimum lot size of 20 ha."

6. Here, the Planning Authority states that their primary criteria in applying LCZ was the presence of native vegetation and either a Natural Assets or Scenic Landscape Code overlay. A Natural Assets overlay (priority vegetation overlay) applies to the Property, however a Scenic Landscape Code Overlay does not. It is clear that no consideration was given to whether the Property was 'significantly visible from surrounding areas' (it is not) as this would not be evident from a Natural Assets overlay, and no further assessments of visibility appear to have been conducted. As a result, the Planning Authority failed to establish the first limb of 'Landscape Values' test when attempting to apply LCZ 1 to the property.
7. The Planning Authority also failed to meet the second limb of the 'Landscape Values' test as they have not provided evidence that the Property was perceived to have a positive value that is important or beneficial to the degree that it warrants specific control of its use.
8. The broad statements made by the Planning Authority about uncleared hilltops and rivers are too vague to be taken seriously as an articulation of the Huon Valley's landscape values. This assertion does not form part of any publicly endorsed State or Council strategy document. Notably, it appears to be the view of a council officer and/or consultants rather than the consensus of the community.
9. The Planning Authority conceded this in its [report made under section 35f of the Land Use Planning and Approvals Act 1993](#) ('the 35f report'), stating on p. 3 that:

"The Council has not undertaken ground truthing to define what the landscape values of the Huon Valley are in the first instance, and secondly, what, of those values, are identified for protection and conservation."

And on p. 4:

"It is also important to note that Council has applied an assumption that "much of the areas of bushland have been spared from historical clearing due to being considered suboptimal for traditional horticultural activities." There is though a significant amount of land in the Huon Valley that has been previously used as cleared rural land but, in recent years, has regrown with native vegetation. This land

may still have those rural opportunities available to them notwithstanding they may be presently viewed as part of the current landscape. Again this land has not been ground truthed and evidence may be provided to challenge the landscape values of the land against the rural use opportunities that may be available. This evidence may result in the LCZ not being correctly applied to that land title."

10. These admissions further undermine any notion that serious thought was given to determining whether the Property contains Landscape Values and confirms that there is little to no evidentiary basis for their statements otherwise.
11. In their supporting report, the Huon Valley Council stated that "*...these areas [zoned as LCZ] have been spared from historical clearing due to being considered suboptimal for agriculture*" ([Supporting Report for the Huon Valley Draft Huon Valley Local Provisions Schedule November 2021](#) p.41). This unevidenced statement fails to meet the high threshold of being "*perceived to have positive value that is important or beneficial to the degree that it warrants specific control of its use.*" In addition, in the case of the Property, the statement is incorrect, as the Property has been both cleared historically and used for agricultural purposes.
12. In the 35f report (representation 310), the Planning Authority stated (referring to the Property) that "*...the site is located on a steep slope, primarily covered in native vegetation contributes to a large contiguous bushland area adjoining the Russell Ridge Conservation Area*". It is unclear why this was included in the response, as it does not help satisfy either criterion of the 'Landscape Values' test. Further, the Property does not adjoin The Russell Ridge Conservation Area (RRCA), but is separated from the closest boundary by at least two other large properties, at a distance of nearly 1km, as demonstrated in the figure below taken from TheLIST (text added).



13. The Property is not substantially visible from the RRCA as the property is surrounded on the north and west sides by the high contours of Blue Hill. This is further evidenced by the HVZA viewshed assessment.
14. It is important to note that even if the Property was visible from or was adjoining the RRCA, this would not be sufficient to satisfy either limb of the 'Landscape Values' test. Schedule 1 of the *Nature Conservation Act 2002 (TAS)* makes it clear that conservation areas such as the RRCA do not protect scenic or landscape values, but instead exist to protect biological or geological diversity. Sustainable uses of natural resources in these areas, including activities such as timber harvesting, are expressly permitted, undermining any idea that the presence of native vegetation should be a factor taken into account in zoning.
15. Using the RRCA to attempt to establish Landscape Values for surrounding blocks when that was not the purpose of its conservation would have the perverse effect of significantly expanding the use land values and reservation purposes in the *Nature Conservation Act*.
16. Additionally, the RRCA areas that are within 5km of the Property are surrounded by private property and there is no public infrastructure that would facilitate access to those parts of the RRCA, nor are there any vantage points where a person in the RRCA could see the Property, either in a car or on foot. There can be no landscape values present if it is not possible for people to see the landscape in question.

17. These factors all mean that the presence of the RRCA has no bearing on the application of LCZ to the Property.
18. The *Flinders* decision (at para 324) states that “LCZ 1 is the key guideline, and its application is contingent on identification of landscape values.” Having failed to establish that landscape values exist at the Property, it follows that LCZ 1 could not have been correctly applied by the Planning Authority when assessing 407 Cloverside Rd. This precludes the application of LCZ to the Property.

Misapplication of LCZ 2

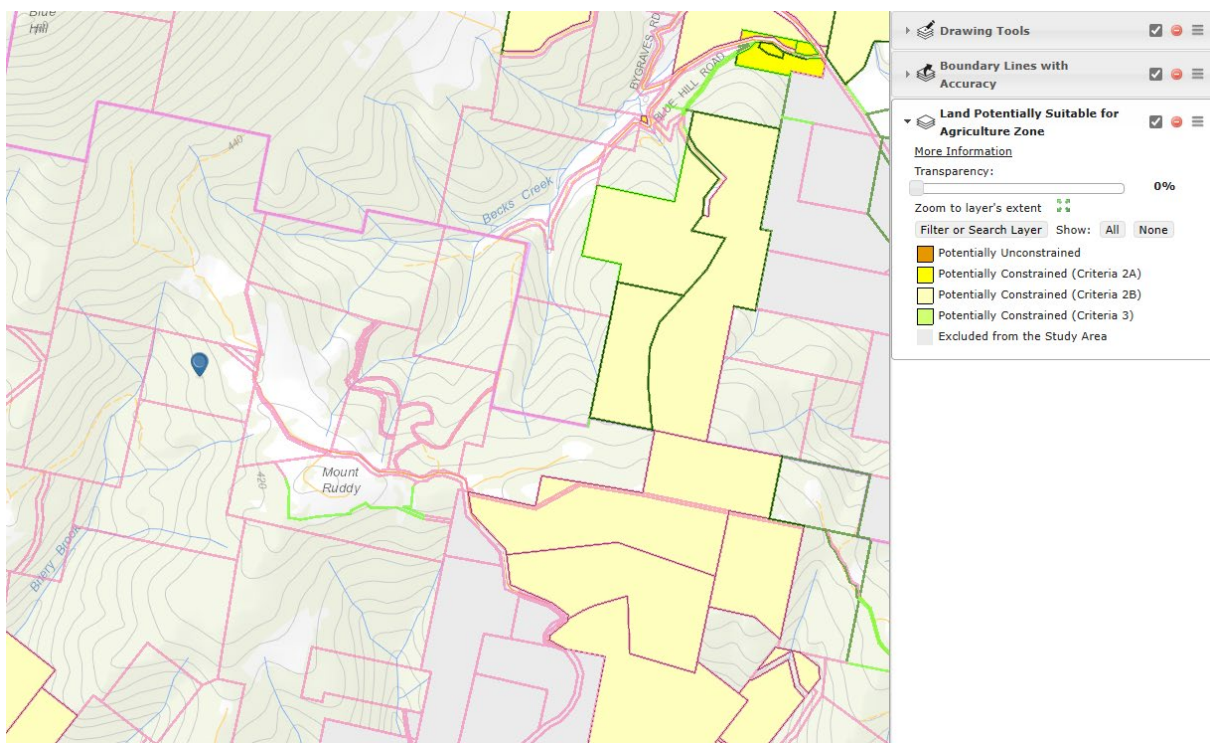
19. Having established that there are no landscape values that would necessitate the application of LCZ at the Property, it is not necessary rebut the Planning Authority’s application of LCZ 2 because LCZ 2 is contingent on the conditions of LCZ 1 being established (*Flinders Local Provisions Schedule approval* [2022] TASPComm 16 at 324).
20. However, even if this were not the case, the LCZ 2 criteria do not apply to the property.
21. LCZ 2(a) states that:

“The Landscape Conservation Zone may be applied to: (a) large areas of bushland or large areas of native vegetation which are not otherwise reserved, but contains threatened native vegetation communities, threatened species or other areas of locally or regionally important native vegetation;”
22. The priority vegetation report (PVR) attached to the LPS map (Appendix 1) provides an estimation of forested area on the Property and lists *Acacia delbata* forest and *Eucalyptus globulus* forests are present on the property. The PVR states that this estimation is not reliable.
23. The estimated forested areas displayed in the PVR are not accurate.
24. The assessment that the Property contains *Acacia delbata* forest and *Eucalyptus globulus* forests is not accurate. The forested areas on the property are comprised of *Eucalyptus obliqua* – a species that is not threatened and would not meet the LCZ threshold of being threatened native vegetation.
25. The Threatened Fauna and Significant Habitat report (Appendix 2) also guesses that swift parrots reside on the property. This report too is, by admission of the authors, not reliable.
26. The owners of the property are familiar with the appearance and call of the swift parrot and have not once seen or heard one on the Property. This is consistent with there being no *Eucalyptus globulus* forests on the Property (the habitat of the swift parrot). There is no record of a swift parrot on or near the Property.

27. The data used to compile these reports and to assess the natural values of the Property are inaccurate and out of date, as confirmed by the planning authority on page 3 of their [report made under section 35f of the Land Use Planning and Approvals Act 1993](#).
28. The inaccuracy of this data is important because of the requirement in LCZ 2 that the land *contain* threatened native vegetation or species. It is not enough the land be estimated (with low accuracy) to potentially contain these things. Without confirmation of the presence of threatened native species or vegetation, specifically at the Property, LCZ 2(a) cannot apply to the Property.

Rural zoning most appropriate for the Property

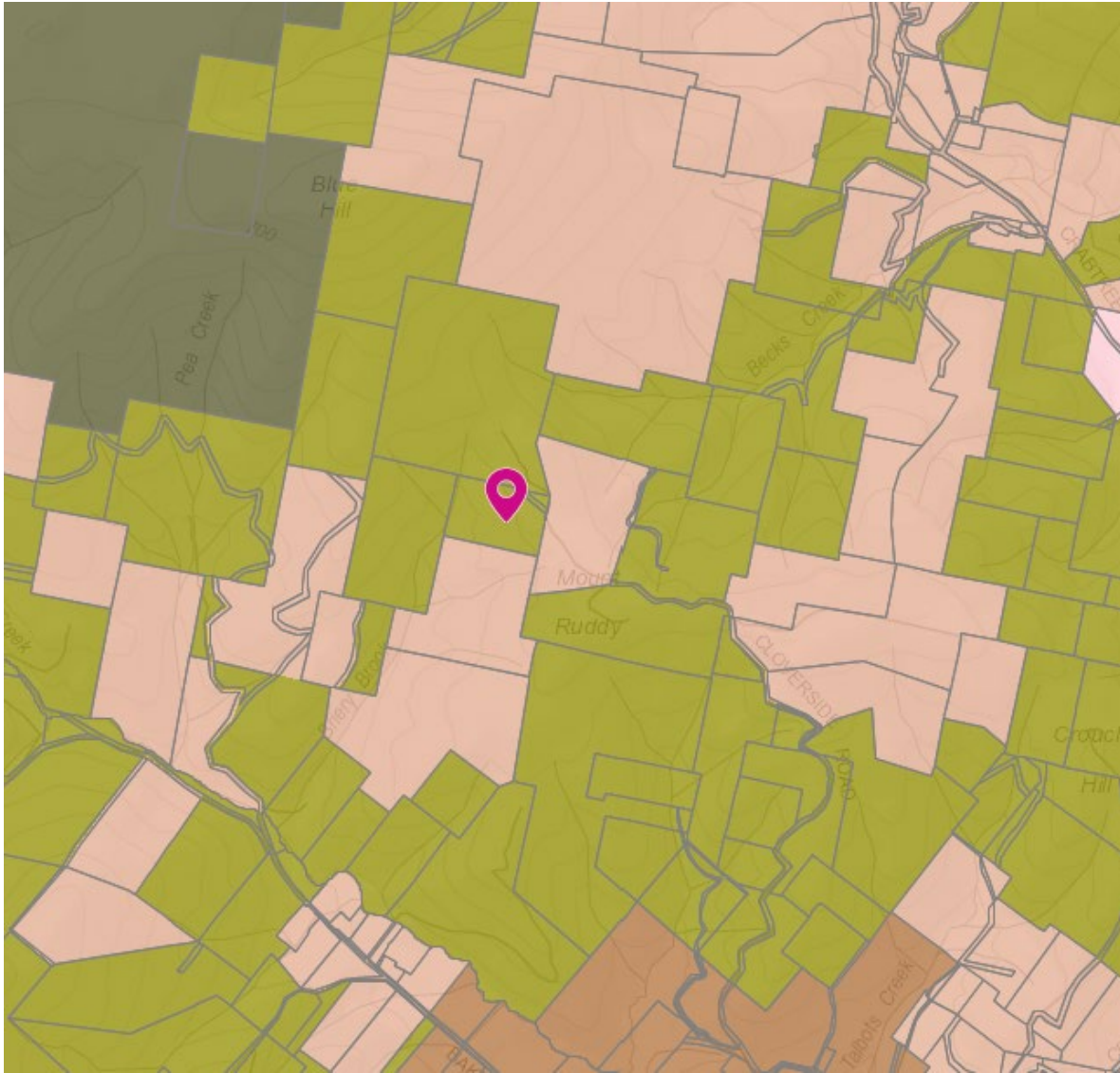
29. The Property fits with the purpose of the Rural zone and should be zoned as such. The property meets the criteria of RZ 1 and RZ 2 (RZ 3 does not seem to apply).
30. The Property meets the criteria of RZ 1 as it is in a non-urban area and has limited agricultural use due to the sharp slope of the land, alpine soil and temperatures. As already established, it does not have landscape or environmental characteristics which make it more suitable to LCZ or EMZ.
31. Regarding RZ 2, the Property is not captured by the 'Land Potentially Suitable for Agriculture Zone' published on theLIST.



32. Additionally, the Property and surrounding area fits the description of the Zone Purpose in the Guidelines. Activities that take advantage of the agricultural uses of the land and its rural

location are already taking place, including vegetable cultivation, fruit and nut growing, and livestock rearing, all of which are appropriate for a rural location.

33. Rural zoning of the property would also minimise the conversion of agricultural land for non-agricultural purposes. As stated elsewhere, the Property has a history as a cattle grazing property, and while that intensive use is no longer suitable, the agricultural characteristics of the Property and surrounding areas can still be taken advantage of, as evidenced by the owners' current and planned activities.
34. The suitability of the Property for Rural activities is further evidence by its previous zoning as Rural Resource rather than Environmental Living under the HVIPS 2015 and its Rural (rather than Hilltop Preservation) zoning under the Huon Planning Scheme 1979.
35. Any use or development of the Property would be of a scale or intensity appropriate for a rural location and would not compromise the function of the surrounding settlements. Many of the permitted and discretionary uses in the Rural zone could be carried out on a small scale, while large-scale or intensive uses such as resource extraction and fuel depot facilities would be inherently unfeasible due to the size and topography of the property.
36. The suitability of the general area for Rural zoning is supported by the fact that the Property directly adjoins two Rural zone properties and is ringed by Rural properties to the north, east, south and west:



37. Any suggestion that the Property is not suitable for the intensity of use allowable in the Rural zone is undermined entirely by the fact that those same uses will be permitted just meters away from the Property's boundary line.
38. These adjoining (and correctly zoned) Rural properties have the same topography, history, priority vegetation overlays, and general character as the Property. Therefore, it is nonsensical to zone them differently, particularly as these other properties are situated at a higher elevation and are more visible from surrounding areas.
39. This has also resulted in spot-zoning. The neighbouring properties support zoning the Property as Rural and they have made a submission to that effect (Representation 290 – Adam Bayliss and Aidan Mulhall 30 May 2022).

Other relevant factors

40. The proposed LCZ would drastically reduce the scope of allowed activities on the Property that are currently enjoyed by the Owners. Whilst Rural Resource zoning to Rural zoning is not an exact like-for-like conversion, it is the closest fit, and all efforts should be made to preserve the existing rights of the landholders rather than restrict them. If the Planning Authority is concerned about native vegetation on the Property then this is appropriately managed with the existing overlays.
41. The proposed LCZ will cause significant financial harm to the Owners. It will make it significantly more difficult and expensive to extend the existing dwelling, expand existing agricultural activities, and will place new restrictions building height, colour and other features that do not exist in the Rural Resource use table. This will result in a substantial devaluation of the property and amount to a significant financial loss for the owners of the Property.

Summary of representations

42. The Planning Authority failed to correctly interpret and apply the zoning Guidelines to the Property when they proposed LCZ.
43. The Property cannot be zoned LCZ because the land is not significantly visible from the surrounding areas and it does not have a positive value that is important or beneficial to the degree that it warrants specific control of its use.
44. The Property meets the Rural Zone Purposes outlined in the Guidelines as well as RZ 1 and RZ 2.
45. Rural zoning is not a threat to the biodiversity values on the Property (if any exist at all) and are appropriately managed by Natural Assets overlays.
46. Taking all of the above into account, the Property should be zoned Rural and not LCZ.

Priority Vegetation Details

Relative Reservation



Relative Reservation

- (NAD) *Acacia dealbata* forest
- (WGL) *Eucalyptus globulus* wet forest

Reservation status is a measure of the degree to which vegetation communities are included in the Comprehensive, Adequate and Representative (CAR) reserve system. Higher levels of reservation give greater confidence that the species for which vegetation communities are surrogates are likely to be protected, subject to appropriate geographic and biophysical distribution in the landscape. Reservation provides greater certainty of the maintenance of better condition vegetation and hence maintenance of ecological function at local and landscape scales.

Why is it included?

- Less than 30% of extent in bioregion is in reserves

Data Source:

- TasVeg 3.0 (minor exceptions)

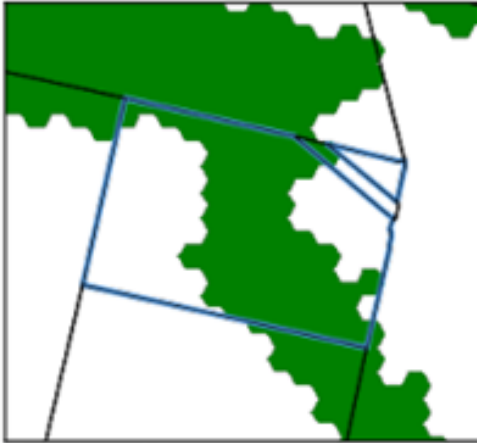
Reliability:

- Highly variable

Management:

- Check TasVeg for field verification
- Consider local extent, condition & management options
- Potentially require on-ground field verification

Threatened Fauna and Significant Habitat



Threatened Fauna

- swift parrot

These are species listed as threatened fauna under the Tasmanian Threatened Species Protection Act (1975) or Commonwealth Environment Protection and Biodiversity Conservation Act (1999). Listed threatened species have statutory recognition that they are likely to become extinct if the factors causing them to be threatened are not managed. Species may be listed due to historical loss since settlement, natural rarity giving rise to potential risk, or impacts of particular land use and land management practices.

Threatened fauna habitat characteristics are extremely varied and are modelled as significant based on Natural Values Atlas records with a limited number of habitat variables or more detailed customised models for about 100 fauna species. Some species habitat occurs across the landscape but not all sites may be essential for species survival and not all suitable habitat may be occupied. Species that rely on this type of habitat are classified as landscape-dependent and are regarded as being of local importance, however the relative importance of the site to the survival of the species can only be known in response to field verification, the context and the nature of a proposal.

Why is it included?

- Statutory recognition that species extinction is likely, however not all sites are important or occupied

Data Source:

- NVA records combined with REM point-based modelling rules
- Habitat-based models

Reliability:

- Variable

Management:

- Check species observation source
- Check data on habitat and local context
- Potentially require on-ground field verification